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12 Proceedings recorded by electronic sound
13 recording; transcript produced by computer-aided
14 transcription service.

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1 (The following was heard in open court at
2 9:44 a.m.)

3 THE COURT: Good morning, everyone.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated.

6 (Pause in proceedings.)

7 THE COURT: We have several issues to
8 address this morning. The first is Sprint's recently
9 filed motion, the motion filed Friday. But there are
10 some preliminary matters that I think we can address
11 and dispose of rather quickly, so let's start with
12 those.

13 First, I call the case of Comcast -- now
14 we're starting to abbreviate -- Cable Communications,
15 LLC, versus Sprint Spectrum L.P., civil action number
16 12-859. I have an order, a proposed order,
17 reflecting the caption change. I'm going to
18 distribute it. Ian, why don't you get this? The
19 two -- yeah. No, we're going -- I think we can --
20 we'll give you three or four, two each. It basically
21 follows what is set forth in Mr. Harkins' letter.
22 And the question is is that appropriate?

23 MR. HANGLEY: It is, Your Honor.

24 THE COURT: There was a question though --
25 I'll let Mr. Finkelson finish reading.

1 MR. FINKELSON: Thank you, Your Honor.

2 (Pause in proceedings.)

3 MR. FINKELSON: Sprint has no objection.

4 THE COURT: Okay, fine. In terms of the
5 second page, do we want the -- what, in essence, is
6 the counterclaim in the caption for now? It
7 certainly is still in the case because there's been
8 no appeal. It's interlocutory. But the question is
9 whether we cut it off after Comcast Cable
10 Communications, LLC, Plaintiff, versus Sprint
11 Spectrum L.P., Defendant.

12 MR. HANGLEY: I would remove it.

13 MR. FINKELSON: Your Honor, we would submit
14 that it should stay in there for the exact reasons
15 Your Honor just mentioned. It's still in the case
16 and --

17 THE COURT: Well, I think -- well, I don't
18 want to keep --

19 MR. HANGLEY: We will stipulate that
20 removing it has no effect, of course, on the appeal.

21 THE COURT: I really think we're not going
22 to trial in that part of the case and so I'm going to
23 remove it. I think that's the best thing to do. It
24 still is in the case for purposes of appeal. So I'll
25 issue that order deleting the reference to the

1 counterclaim.

2 MR. HANGLEY: Thank you for bringing that
3 to our attention.

4 THE COURT: There's a second --

5 MR. HANGLEY: I hadn't even noticed that,
6 Your Honor.

7 THE COURT: There's a second order that we
8 discussed on Friday relating to joint infringement.
9 I thought that was a done deal until Mr. Hangley
10 raised a question, and I'll hear from you now.

11 MR. HANGLEY: Certainly, Your Honor. As I
12 think I made clear to Mr. Finkelson and I hope to the
13 Court, it is our intention that those claims that we
14 talked about, the Syniverse claim, be dismissed with
15 prejudice. What we don't know because Sprint has
16 made clear to us and to the Court that it is going to
17 introduce evidence regarding Syniverse, we don't know
18 what they're going to do with that evidence, and we
19 think there is no harm in asking the Court to hold
20 onto that order of dismissal with the understanding
21 that it will be entered at the end of the case, which
22 in the event something unanticipated happens, if
23 Sprint does something -- and I don't know what it
24 would be -- that makes it pertinent to the case, we
25 will not have to go through the business of reopening

1 the case and having all of the necessary follow up.

2 Again, I stress that what we want, what
3 Comcast wants in accordance with the agreement we
4 made by way of streamlining the case, is ultimately
5 to dismiss the case with prejudice, as against -- as
6 involved the Syniverse situation.

7 THE COURT: Comcast doesn't intend to offer
8 any evidence of Syniverse? That's a question.

9 MR. HANGLEY: We do not.

10 THE COURT: Fine. Thank you. Mr.
11 Finkelson?

12 MR. FINKELSON: Good morning, Your Honor.
13 Thank you.

14 THE COURT: Good morning.

15 MR. FINKELSON: As Your Honor knows, we
16 painfully took steps to reach agreement on the
17 Syniverse issue. And from Sprint's perspective, we
18 don't see what the purpose of the reservation is for.
19 We're proceeding to trial in this case. There will
20 be evidence of Syniverse. We certainly don't want
21 that evidence coming in with the threat of a
22 potential claim against Syniverse still hanging over
23 our heads. I think Your Honor's order appropriately
24 captures the agreement of the parties. The claims
25 should be dismissed with prejudice at this point in

1 time.

2 Your Honor has indicated that you will
3 provide the jury with a limiting instruction at the
4 appropriate time which will make clear to them that
5 the Syniverse -- issue of Syniverse infringement is
6 not theirs to decide. And from Sprint's perspective,
7 that is the appropriate way to deal with the case.

8 THE COURT: Well, except that it doesn't
9 provide a remedy, as you phrased it, if Sprint
10 introduces evidence that undoes this agreement. A
11 lot of what we're going to address this morning
12 before we get to picking a jury is, in my judgment,
13 peripheral. But it all turns on Sprint's trial
14 strategy. I don't know what it is. And I'm
15 referring, of course, to the pending motion regarding
16 Sprint's effort to preclude Comcast from introducing
17 any evidence of its patent acquisition policy.

18 MR. FINKELSON: And I'm happy to address
19 that motion as well, Your Honor, at the appropriate
20 time.

21 THE COURT: No, we're --

22 MR. FINKELSON: But with --

23 THE COURT: We will, and --

24 MR. FINKELSON: -- respect to Syniverse, it
25 stems from a claim that Comcast brought in this case.

1 They brought an allegation against Syniverse. They
2 have agreed to drop that allegation. It's really an
3 issue as to how they're going to put on their case,
4 and they've agreed not to put forward proof that
5 Syniverse is infringing. They have agreed not to
6 allege that Syniverse --

7 THE COURT: All right.

8 MR. FINKELSON: -- isn't infringing.

9 THE COURT: Well, then the only person --
10 the only side of the case that can undo that is
11 Sprint. I think what I'm going to do, Mr. Hangle, is
12 sign the order subject to what I'm -- what I'm
13 about to say, and that is that if there is evidence
14 with respect to Syniverse that you think should --

15 MR. HANGLEY: Relieve me.

16 THE COURT: -- should grant -- that should
17 lead to the granting of some relief for Comcast, I'll
18 certainly consider it.

19 MR. HANGLEY: Thank you very much, Your
20 Honor.

21 THE COURT: And so we'll do that. I don't
22 have a loose copy of the proposed Syniverse order.
23 It was sent to counsel on -- I'm just looking.

24 MR. HANGLEY: I think it was on Friday.

25 THE COURT: I think it was Friday. But my

1 email chain doesn't have a date. I want a copy of
2 that order that's dated today. I'll sign it. And I
3 want a copy of the order on the caption change with
4 the -- what we'll do is eliminate from the caption of
5 the case going forward, at least for purposes of the
6 trial, reference to Sprint Spectrum as a plaintiff.
7 All right, that's quickly two things.

8 Secondly -- thirdly, with relate -- with
9 regard to the anticipation issue -- and I think this
10 was my doing and I just want to be sure that I'm
11 right. We've inserted the appropriate date for
12 anticipation as December 23rd, 1999. And I think
13 that was -- that's the court priority date of the 870
14 patent. I need help on that issue. What is it?

15 MR. HANGLEY: I'm told that's correct, Your
16 Honor.

17 THE COURT: Yes, but what is it?

18 MR. HANGLEY: Oh.

19 MR. RIOPELLE: Do you have the jury -- it's
20 in the jury instructions.

21 MR. HANGLEY: It's in the jury
22 instructions.

23 MR. RIOPELLE: Do you have it?

24 THE COURT: You don't know that, Mr.
25 Hangley?

1 MR. HANGLEY: No.

2 (Pause in proceedings.)

3 MR. RIOPELLE: Yes, December 23rd, 1999.

4 THE COURT: Well, yes, I know that. I got
5 the date.

6 MR. HANGLEY: I believe it was December
7 23rd --

8 MR. RIOPELLE: Yes, I was --

9 MR. HANGLEY: -- 1999, Your Honor.

10 MR. RIOPELLE: I was confirming it from --

11 MR. HOFFMAN: -- from the jury instructions
12 that you issued, Your Honor.

13 THE COURT: Yes.

14 MR. HANGLEY: Now I remember.

15 THE COURT: And I think I got it. It was a
16 date I picked out of the Federal Circuit Bar
17 Association instructions, but I'm not sure and I
18 don't have it marked. I'm not sure what it is. What
19 is the priority date? Is that the date when Nokia
20 first applied for the -- for the patent abroad?

21 MR. HANGLEY: Yes.

22 MR. FINKELSON: Yes, Your Honor.

23 THE COURT: Okay. Good. And now we'll
24 address the issue relating to the motion. I refer to
25 the motion that Sprint filed on Friday, motion to

1 exclude evidence of Comcast patent acquisition
2 policies. Mr. Finkelson?

3 MR. FINKELSON: Thank you, Your Honor. As
4 Your Honor has noted, Sprint has filed a motion to
5 exclude evidence of Comcast patent acquisition
6 policies, and this was really tied, Your Honor, at
7 least from a 402 and 403 perspective, to the issue of
8 Your Honor's enforcement of the joint stipulation
9 between the parties.

10 THE COURT: Except that this issue has been
11 in the case from the very beginning, and I went
12 through all of the documents that have been filed,
13 starting with the motion to compel that Sprint filed
14 in December of 2014 and all of the motions in limine,
15 even the motions that sought to take out of the case
16 the cross licenses with AT&T, Verizon, and IBM. And
17 there was no reference at all to the Comcast
18 acquisition -- patent acquisition policy. The first
19 reference was in the motion filed on Friday, the
20 27th. Now, correct me if I'm wrong, but that's my
21 read of the documents that have been submitted to me.

22 MR. FINKELSON: I reviewed those documents
23 again, Your Honor, over the weekend and there is no
24 mention in those documents of a general patent
25 acquisition policy.

1 THE COURT: Okay.

2 MR. FINKELSON: The reason for that is
3 because we have been focused on the specific issues
4 as it relates to the acquisition of the 870 patent,
5 as reflected in the -- in the motion of limine we
6 filed with respect to that.

7 THE COURT: Except that as early as
8 January, I think it was 6th, when I came up with the
9 alternative -- there was a pending motion in limine
10 that I ruled on finally. But at that time, January
11 6th, there was a motion in limine, and that's when I
12 came up with the alternative proposal that Comcast
13 not call the two witnesses who had been in the case,
14 and instead, pick a third witness, a non-lawyer, and
15 have him testify as to the patent acquisition policy.

16 MR. FINKELSON: You did, Your Honor. You
17 came up with -- the concept of general patent
18 acquisition policy and testimony about it I think was
19 first put into focus by Your Honor's alternative,
20 allowing Comcast to put forward Mr. Finnegan, who had
21 not previously been on their witness list for this
22 case. And they put forward Mr. Finnegan, and it's
23 the statements that Mr. Finnegan made in his
24 deposition with respect to what the patent
25 acquisition policy is that raised the red flags for

1 us as to how that ties in to and might, as we noted
2 in our brief, be an end run around to the same result
3 that Your Honor --

4 THE COURT: Well, it can only be an end run
5 if we get into the issue, and it's tangential. But,
6 conceivably, it can only be an end run if the patent
7 acquisition policy focuses on value. Is that what
8 you're challenging?

9 MR. FINKELSON: I think if the patent
10 acquisition policy focuses on value, it would
11 conceivably be an end run. And just to be more -- I
12 think Your Honor has properly captured it broadly,
13 but just so you know why we've raised the motion,
14 they put forward Mr. Finnegan on patent acquisition
15 policy, as Your Honor suggested, and he's now their
16 lead witness at trial. He's their number one
17 witness. And when we asked him at the deposition
18 what is that policy, that general patent acquisition
19 policy -- and this is in our papers -- he said,
20 "General patent acquisition policy, which was to
21 acquire high quality, litigation grade patents." And
22 that language looked awfully similar to us with what
23 Mr. Finnegan or nobody else at Comcast is allowed to
24 say, specific to the 870. And that was the concern,
25 that if Mr. Finnegan can come in and in a general

1 statement basically say all we do is acquire high
2 quality, litigation grade patents, then to it, the
3 870 patent was one of those and that's what they're
4 not allowed to say under the stipulation. That's
5 what caused our concern and prompted --

6 THE COURT: Have you read --

7 MR. FINKELSON: -- our motion.

8 THE COURT: -- I'm sure you have, the
9 submission -- I received it this morning -- from Mr.
10 Hangle, his letter of January 29th, 2017, which
11 accompanied his response, Comcast opposition to
12 Sprint's motion to exclude evidence of the Comcast
13 patent acquisition policy? You've read it?

14 MR. FINKELSON: I have, Your Honor.

15 THE COURT: The block quote on page two, is
16 there anything problematic about that block quote?
17 This is a quote of the testimony previously given by
18 David Marcus.

19 (Pause in proceedings.)

20 MR. FINKELSON: Subject to the statements
21 we have previously made to Your Honor both with
22 respect to Mr. Marcus and Mr. Finnegan as it relates
23 to privilege issues, which I'm not going to get into
24 today -- I know that we're done with that. But
25 subject to the comments we've made about Mr. Marcus

1 using this testimony in the way we thought he did and
2 was at the deposition, the substance of the
3 paragraphs, to answer Your Honor's question, Sprint
4 would not object -- provided there's an appropriate
5 limiting instruction, which Your Honor noted on the
6 record last week, we would not object --

7 THE COURT: You know --

8 MR. FINKELSON: -- to the substance of
9 this.

10 THE COURT: You know, there's another way
11 to handle this and I thought of it this morning.
12 Comcast has choices now. One is to anticipate
13 Sprint's arguments and put in some of this evidence
14 in its case in chief. That presents a myriad of
15 problems because Comcast doesn't know what Sprint is
16 going to say. The other is to wait and see how I
17 rule on what Sprint has to offer on the subject,
18 keeping in mind that they might -- I think Mr.
19 Hangley knows where I'm going -- keeping in mind that
20 Sprint might open the door to a more broad Comcast
21 response and to handle it in rebuttal. That would
22 really eliminate the majority of the problems.

23 I have some guidelines though, and the
24 guidelines would be that because I've taken the value
25 of the 870 patent, high value, litigation worthy

1 description of the 870 patent, I think that language
2 should go out of the patent acquisition policy
3 testimony whether it is offered in Comcast's case in
4 chief or in rebuttal.

5 MR. FINKELSON: We would agree that that
6 language should come out regardless of --

7 THE COURT: I'm sure you would

8 MR. FINKELSON: Well, Your Honor, we --

9 THE COURT: Thank you.

10 MR. FINKELSON: -- do -- in fairness, we do
11 it because it all does -- that stipulation and
12 language all does stem out of the broader dispute
13 that we tried to resolve that way.

14 THE COURT: Except that you sat on your
15 hands for over a month. This all was in the case via
16 Dellinger and Marcus I think years ago, and it wasn't
17 surfaced as an issue for me until Friday, January
18 27th, eve of trial. But we can make this a short
19 argument. Do you agree to that, Mr. Hangle?

20 MR. HANGLEY: No.

21 (Pause in proceedings.)

22 MR. HANGLEY: Your Honor, we are -- let me
23 tell you what the patent policy -- the patent
24 acquisition policy evidence is as I contemplated
25 coming in. I think we've talked about it

1 (indiscernible). It's no secret. It is that
2 Comcast, when it found itself on the brink of
3 entering into new fields and expanding and knowing
4 that people in other fields were expanding into
5 Comcast's fields, so that the what we call
6 convergence in the area might occur, was being and
7 worried about being approached by people using their
8 own patent portfolios as weapons to keep Comcast out
9 of the business or to extract money from Comcast.

10 The laity, the lay people at Comcast who
11 were hired to do this sort of thing, the non-lawyers,
12 Finnegan, Dellinger -- Finnegan developed a patent
13 acquisition policy, the aim of which was to -- not
14 only to harvest patents within Comcast in the areas
15 where it would naturally invent them because this is
16 what they do -- they do video and things like that --
17 but also to bring -- to acquire patents out in the
18 marketplace to allied fields so that if someone comes
19 knocking at the door brandishing their patents, you
20 can reach into your drawer and you can see gee, I
21 have some patents too in your field and I hope we can
22 have a civil conversation here and try to work things
23 out between us, which --

24 THE COURT: Well, that patent strategy does
25 not trigger what is of concern to me and I think is

1 Sprint's primary aim in keeping this evidence out,
2 and that is high quality, litigation worthy.

3 MR. HANGLEY: Yeah, not --

4 THE COURT: And the reason why I'm troubled
5 by that proposed evidence is the fact that you've
6 interposed attorney-client privilege and work-product
7 privilege objections when asked for the basis of
8 those conclusions offered by Dellinger and Finnegan.
9 Now, if you're willing to keep that out, we can
10 proceed on that basis --

11 MR. HANGLEY: I --

12 THE COURT: -- in other words, high
13 quality, litigation worthy.

14 MR. HANGLEY: I can keep that language out,
15 but I -- there was something I said to you in the
16 brief that I participate in --

17 THE COURT: You must think I'm a fast read.
18 Although I got here at 7:30, I didn't receive your
19 documents until about 9:00, and they're -- it's
20 pretty thick. It's I don't know, maybe 40 pages.

21 MR. HANGLEY: That's really -- nobody looks
22 at exhibits.

23 THE COURT: I got the --

24 MR. HANGLEY: If we --

25 THE COURT: -- impression you might have --

1 MR. HANGLEY: If we go to page three --

2 THE COURT: -- you might have served me
3 last.

4 MR. HANGLEY: Pardon me?

5 THE COURT: You might have served me last.
6 I learned in heavy duty litigation to put the copies
7 of the person -- the copies going to the person I
8 didn't want to spend a lot of time reading on a pony
9 going the wrong way and expedite everything else.

10 MR. HANGLEY: No, what I -- what I said at
11 page three of the brief is that anything we say about
12 the program in Sprint's mind is a backdoor way of
13 getting Comcast's opinion on the value of a Nokia
14 patent into evidence. We are not going to put
15 evidence of the value of the patent in through these
16 witnesses. We're not even -- I'm perfectly willing
17 to say that we're not going to say we were looking
18 for high value patents. I'm perfectly willing to say
19 that we were trying -- that we were not looking for
20 litigation worthy patents. But, Judge, it's going to
21 be very clear from anything that we say, as I say in
22 the brief, if you go out and buy something, anybody
23 assumes that you put some value on it because people
24 don't go out and buy things that they don't want.
25 And you don't want something without having some

1 vague concept of value in your head. That's how
2 people behave.

3 What I'm suggesting is I do not want to be
4 hamstrung by the -- by the logic -- sophistic logic,
5 I might say, that if it has anything to do with overt
6 action about buying patents or looking at patents to
7 separate the wheat from the chaff, that goes to
8 value, and, therefore, it goes to your opinion of
9 value, and, therefore, you can't put it in. That I
10 will not agree to do.

11 THE COURT: Well, I'm not asking you to
12 agree. I've decided I'm going to have to rule, and
13 my ruling is -- I don't think we have to prolong
14 this -- is that you can anticipate what Sprint will
15 say, provided, however -- and I'm talking about with
16 evidence of Comcast patent acquisition policy --
17 provided that there be no reference to an acquisition
18 policy that is aimed at acquiring patents of high
19 value or litigation worthiness.

20 MR. HANGLEY: Okay. Now, we -- it's
21 understood I hope that we're going -- that they were
22 acquired with a view to having them there for use as
23 negotiating to --

24 THE COURT: Well, I think this is all part
25 of your not being sure what Sprint is going to do

1 regarding --

2 MR. HANGLEY: Oh, I'm pretty sure what
3 they're going to do.

4 THE COURT: -- regarding Comcast as the
5 patent aggressor and targeting Sprint. And so
6 whatever I'm ruling -- my ruling today, now, is
7 subject to reconsideration if Sprint opens the door.
8 And I thought I said as much in the order that I
9 issued when I thought I put this issue to bed. I did
10 put it to bed with respect to evidence of value of
11 the 870 patent. But the same reasoning applies to
12 the general issue that we're talking about now,
13 patent acquisition policy that focuses on the
14 acquisition of high value, litigation worthy patents.
15 So that's the way you'll start, but if Sprint opens
16 the door, you can seek reconsideration.

17 MR. HANGLEY: Thank you, Your Honor.

18 THE COURT: And that certainly is an
19 appropriate subject for rebuttal. All right. Is
20 there any issue that -- I think that takes care of
21 that issue.

22 MR. FINKELSON: We understand your order,
23 Your Honor.

24 THE COURT: All right.

25 MR. FINKELSON: Thank you.

1 THE COURT: I'll try to draft it sometime
2 today.

3 MR. HANGLEY: Thank you, Your Honor.

4 THE COURT: I haven't seen the jury binder
5 yet.

6 (Pause in proceedings.)

7 THE COURT: And by the way, do I have --
8 and I don't think I'm going to include this in my
9 orders in the future. I think I require that you
10 provide me with two copies of all exhibits.

11 MR. RIOPELLE: Yes.

12 THE COURT: You've made it impossible for
13 me to try criminal cases because the criminals enter
14 through the door that you've blocked with your boxes.
15 And it seems to me --

16 MR. HANGLEY: No, Your Honor, some of them
17 come through the other door.

18 THE COURT: The boxes come through the
19 other door. The defendants come through the door to
20 which I'm pointing, and we're going to have to do
21 something. But I've always ordered two copies of
22 exhibits. I now realize that in a monster exhibit
23 case, that is not exactly a goal to be desired. But
24 we'll work around it. When I saw the exhibits, if
25 you really intend to offer them in evidence, my only

1 concern is that we're going to end up with far too
2 complex a presentation, and that increases the
3 likelihood of a hung jury, which I'm -- I must say
4 I'm a little worried about. What do you have there,
5 Mr. Hangley?

6 MR. HANGLEY: These are the two binders.

7 THE COURT: Binders.

8 MR. HANGLEY: We know you don't have enough
9 binders, Your Honor. These are the binders that the
10 jury will get.

11 THE COURT: Good. Thank you. Michael,
12 give one of them to Ian and Kevin.

13 MR. HANGLEY: They have no identifying
14 marks on them at all. I guess was that agreed upon?

15 MR. FINKELSON: It was when we got the
16 copies that you all delivered to us.

17 THE COURT: Well, you've got the program
18 for the video and that's good. You've got the patent
19 and agreed upon definition of terms, and the
20 glossary. And it's all agreed upon?

21 MR. HANGLEY: Yes.

22 MR. FINKELSON: It is, Your Honor.

23 THE COURT: I think that's fine.

24 (Pause in proceedings.)

25 THE COURT: All right, let me look and see

1 if there are any other issues that we need to
2 address.

3 (Pause in proceedings.)

4 THE COURT: I think not.

5 (Pause in proceedings.)

6 THE COURT: No, I have nothing else. Where
7 is Ms. Hull? We'll get a jury of 50 jurors, which
8 presents something of an issue. I can't see from
9 here -- do you have any boxes of exhibits on the
10 benches?

11 MS. HULL: No.

12 MR. FINKELSON: Just some underneath, but
13 not on the benches.

14 THE COURT: So the proposed jurors will be
15 sitting on your exhibits? Is that what you're --

16 MR. FINKELSON: Not our exhibits.

17 THE COURT: Okay.

18 MR. FINKELSON: I don't believe we have any
19 in the courtroom, Your Honor, back there.

20 MR. GOETTLE: Your Honor, they're on the
21 floor underneath, not in the way of their legs.

22 They're underneath the floor, but we'll be happy --
23 if you want us to move them --

24 THE COURT: No, I don't know where you're
25 going to put them --

1 MR. GOETTLE: Yeah.

2 THE COURT: -- since you've already stacked
3 them rather high.

4 MR. GOETTLE: We can -- we can move them
5 quite quickly, Your Honor.

6 THE COURT: How about -- no, you can leave
7 them. What about the people? What do you propose to
8 do with --

9 MR. GOETTLE: We will -- we will empty the
10 benches on the -- from the Comcast side, we will
11 empty the --

12 THE COURT: Well, we're not emptying the
13 benches on one side. We're emptying the benches on
14 both sides. We're going to have five rows of ten
15 jurors each. There are only five rows in the
16 courtroom.

17 MR. HANGLEY: Your Honor, I do -- will have
18 one more matter of business to raise with the Court.

19 THE COURT: All right. Let's first decide
20 where we're going to put everybody.

21 MR. HANGLEY: Can we pull some of the seats
22 up and put some --

23 THE COURT: Why have we stacked some chairs
24 in the back, Michael?

25 COURTROOM DEPUTY: I'll be moving those.

1 THE COURT: But that's not enough for
2 everybody, so -- well, you have a little time to
3 figure this -- it will take about oh, 20 minutes or
4 maybe a little bit more to get a jury out.

5 (Pause in proceedings.)

6 THE COURT: Well, when we actually do jury
7 selecting we can -- we can empty the jury box then.
8 See, in the Court of Appeals I asked Kevin Hanson,
9 last year's super clerk on the case, to come down and
10 kind of let us know what will happen upstairs when
11 one of you appeals. He doesn't have any input on
12 what we do with the spectators in the courtroom. I
13 suggest -- we've got 16 seats in the jury box. Let's
14 do that, but they'll have to vacate those seats --

15 MR. FINKELSON: When we start seating
16 people.

17 THE COURT: -- when we start seating. So
18 we'll do that. All right, is there any -- Hangley,
19 you have another issue?

20 MR. HANGLEY: Yes, Rule 615, sequestration.
21 Now, Your Honor, we intend to request sequestration,
22 but I wanted to make sure that I was clear on what
23 the sequestration rules would be. The rule itself
24 doesn't speak clearly to the point, and Wright &
25 Miller does. Wright & Miller says that, for example,

1 in a case where parties are getting daily copy of
2 transcript the intention of the rule is not only to
3 keep witnesses from listening to one another's
4 testimony, but to keep witnesses from reading one
5 another's testimony. That language is not anywhere
6 in the rule. If that is the Court's interpretation
7 of the rule, we would invoke Rule 615 and request
8 sequestration. If, in fact, witnesses would be
9 entitled to read testimony at the end of the day and
10 accomplish the same thing as having been there, than
11 there is -- it's just a botherance to raise Rule 615.
12 So we really need guidance from the Court as to what
13 your interpretation is.

14 THE COURT: You're right, 615 doesn't
15 address reading transcripts.

16 MR. HANGLEY: Right. Wright & Miller says
17 it's the way to go, says it's the better practice.

18 THE COURT: Mr. Finkelson?

19 MR. FINKELSON: Your Honor, we have no
20 objection to what Mr. Hangley described. In other
21 words, sequestered witnesses, fact witnesses, can't
22 listen to testimony in the courtroom, nor can they --

23 THE COURT: Read it.

24 MR. FINKELSON: -- read others' testimony.

25 THE COURT: That's my view.

1 MR. HANGLEY: Excellent. Then we do --

2 MR. FINKELSON: Your Honor, on the same
3 issue of witnesses, I take it with respect to
4 witnesses that are on the stand overnight, our
5 general practice is that you can't speak with those
6 witnesses while they are still on the stand and have
7 not been released.

8 MR. HANGLEY: That is not my interpretation
9 of the -- of Eastern District practices, nor is it
10 one I've ever followed before Your Honor. When
11 there's a question pending or perhaps when a witness
12 is on cross -- actually, I -- my personal rule is
13 when a question is pending you can't talk to the
14 witness about his testimony. When there's not a
15 question pending you can talk to him about it. And
16 that is why -- what we used to affectionately refer
17 to as the (indiscernible) practice. It was never
18 adopted bench-wide in the Eastern District of
19 Pennsylvania.

20 THE COURT: Well, we can agree on what's
21 appropriate. First, with respect to parties -- and
22 that raises a question of who is --

23 MR. HANGLEY: Who's the party
24 representative?

25 THE COURT: -- parties. With respect to

1 parties, the rule is different, generally, than with
2 respect to witnesses.

3 MR. FINKELSON: And I was actually going to
4 clarify that on the comments I just made.

5 THE COURT: The party rule is a party can
6 always be available to discuss things with his
7 lawyer.

8 MR. FINKELSON: And we intend to have our
9 party representative here, who is also a witness, but
10 he's our corporate rep. He'll be here during the
11 course of the case.

12 THE COURT: Now, the question is if that
13 happens, if we have a party witness on the stand, and
14 there's a break or -- a break during the day or an
15 overnight break, is the witness -- well, can opposing
16 counsel ask the witness did you discuss the case with
17 your opponent during the break?

18 MR. HANGLEY: My earliest experience with
19 that rule was before Judge Fuller, and I requested
20 that instruction, and he said certainly, Mr. Hangle, what rule is that? And I fumbled around for a while
21 because there isn't any such rule.

22 THE COURT: Well, except that we --

23 MR. HANGLEY: And by the way, he denied my
24 request.
25

1 THE COURT: We've been -- I'm aware of a
2 different rule, and I think the first time it
3 surfaced was in a case I tried before Judge Joseph
4 before he became Chief Judge. And the bottom line,
5 it's been written about a lot. And what is your
6 position? Party -- and we'll define a party
7 witness -- on the stand speaks to his or her lawyer
8 over a break, either a break during the day or an
9 overnight break. Is it appropriate for opposing
10 counsel to ask the witness what did you -- did you
11 meet with your counsel or talk to your counsel? Yes?

12 MR. HANGLEY: I --

13 THE COURT: What do you say?

14 MR. HANGLEY: I think it's not. I also
15 think it's not a big deal. I've never heard of a
16 harmful answer to that party come -- in response to
17 that question.

18 THE COURT: Oh, like he told me to tell the
19 truth --

20 MR. HANGLEY: Yeah, that's what you get.

21 THE COURT: That kind of an answer, yes.

22 MR. HANGLEY: Right. That's what you get.

23 THE COURT: Okay. Well, that's what I
24 instructed my witnesses to say if they were
25 questioned when --

1 MR. HANGLEY: (Indiscernible).

2 THE COURT: -- I was a lawyer.

3 MR. FINKELSON: That practice is still in
4 place, Your Honor.

5 THE COURT: Well, do we agree? I'd like to
6 reach some agreement since you raised it, Mr.
7 Hangley. Indirectly, you raised it.

8 MR. HANGLEY: I have no objection to Mr.
9 Finkelson or counsel on either side saying did you
10 talk to your attorneys about (indiscernible)
11 questions on that. It will not become the --

12 MR. FINKELSON: And I agree. With respect
13 to party witnesses, which --

14 THE COURT: Well --

15 MR. FINKELSON: -- as Your Honor said,
16 you'll define, we have a lot of corporate rep --

17 THE COURT: Non-party witnesses.

18 MR. FINKELSON: With respect to non-party
19 witnesses --

20 THE COURT: And that doesn't -- by a party
21 witness, I'm not referring to employees.

22 MR. FINKELSON: I understood you to be
23 referring to the corporate representative --

24 THE COURT: Yes.

25 MR. FINKELSON: -- is here for all

1 testimony.

2 THE COURT: Yes.

3 MR. FINKELSON: And we're fine with that.

4 THE COURT: Well, either the corporate
5 representative -- but, for example, if someone who is
6 not the corporate representative, but who is
7 obviously identified with the corporation, such as --

8 MR. HANGLEY: That's my definition of a
9 party witness, somebody whose --

10 THE COURT: Well, the CEO, for example.

11 MR. HANGLEY: Yeah, or a vice president.

12 THE COURT: Yes.

13 MR. FINKELSON: But not a -- not a regular
14 employee, as Your Honor --

15 THE COURT: Not a regular employee.

16 MR. FINKELSON: -- pointed out? We have no
17 objection to that.

18 THE COURT: If we have an issue with that,
19 we can address that.

20 MR. FINKELSON: I don't -- I don't think
21 we're --

22 THE COURT: All right.

23 MR. FINKELSON: Yeah, I think --

24 THE COURT: Non-party witnesses.

25 MR. FINKELSON: I think that --

1 THE COURT: Do you have a different --

2 MR. FINKELSON: Well, my practice has
3 always been when the witness is on the stand over a
4 break or overnight, still under examination, that
5 there aren't communications, particularly on cross-
6 examination. So if the witness is on the stand in
7 that context, we would ask that that witness not be
8 speaking with counsel.

9 MR. HANGLEY: I've never followed that
10 rule. If there are jurisdictions where it is the
11 rule, (indiscernible). I've never followed that
12 rule. And, you know, there are I think one federal
13 case -- and I don't have them with me now -- and a
14 couple of state cases saying specifically that that
15 is not a requirement.

16 THE COURT: Well, it's not required. And
17 maybe we should draw a distinction between direct
18 examination and cross-examination.

19 MR. FINKELSON: It's really cross that is
20 the focus of my comment. If the parties want to come
21 to an agreement that on direct, a witness is still on
22 the stand, they can consult and -- we don't have an
23 objection to that. But on cross, I'd be interested
24 in seeing Mr. Hangley's cases. I don't doubt that
25 they exist, but --

1 THE COURT: Well, I don't think the
2 guidance -- we'll get it from the Court of Appeals.
3 It will be -- it's discretionary I'm sure. And the
4 bottom line.

5 MR. FINKELSON: That is correct.

6 THE COURT: And the bottom line, I think
7 we'll adopt the rule. But with regard to direct
8 examination, there can be discussion.

9 MR. FINKELSON: With all witnesses?

10 THE COURT: No, I'm -- well, I'm drawing
11 the distinction between -- and maybe we shouldn't
12 draw a distinction. Where I'm going on non-party
13 witnesses is on direct examination, there can be a
14 discussion, but not on cross-examination. The cross-
15 examiner should not be disadvantaged by the fact that
16 there's a recess, particularly if the recess is over.
17 And so with respect to both party and non-party
18 witnesses, on cross-examination, if the lawyer,
19 proponent of the witness, talks to the -- either the
20 witness, non-party or party witness, that's fair game
21 for --

22 MR. HANGLEY: So you can do it, but expect
23 them to be asked about it?

24 MR. FINKELSON: So you -- okay, that's a
25 little -- that was different than what I was

1 suggest -- so Your Honor is saying that you can, in
2 fact, talk to them on cross-examination?

3 THE COURT: No. Well --

4 MR. FINKELSON: Because I think that's --
5 for party witnesses, I agree that it should be fair
6 to talk to them and fair to ask the question, if
7 someone desired, did you talk to somebody? I don't
8 think either of us -- you'll see either of us doing
9 that. But for a witness on cross-examination, I
10 think the appropriate course --

11 THE COURT: Is no con --

12 MR. FINKELSON: -- is no -- is no
13 discussions for exactly the reasons Your Honor
14 mentioned in terms of disadvantaging the cross-
15 examining party.

16 THE COURT: All right. I was debating
17 whether to apply the same rule on cross-examination,
18 but I -- and we can do it either way. I have a pile
19 of stuff on my desk that addresses this issue, and
20 the courts go all over the place.

21 MR. HANGLEY: I'm totally confused. I have
22 no idea what the current state of the bidding is. I
23 apologize.

24 THE COURT: So party witnesses, if you want
25 to talk to your witness on cross-examination, you

1 open the door to a question by the cross-examiner as
2 to did you talk to your attorney? Yes. What did you
3 say? What did he say? On non-party witnesses, on
4 cross-examination, no contact.

5 MR. FINKELSON: No conversation.

6 THE COURT: Okay.

7 MR. FINKELSON: That makes sense, Your
8 Honor.

9 THE COURT: I think so. I just handed me
10 a note regarding the transcripts, which is an issue
11 that you raised. Are they going to be filed under
12 seal?

13 MR. HANGLEY: I think so.

14 THE COURT: I think so. That's what --

15 MR. FINKELSON: I think they are, Your
16 Honor.

17 THE COURT: -- you've been talking about.

18 MR. HANGLEY: Transcripts under seal?

19 (Pause in proceedings.)

20 MR. HANGLEY: We're not -- we are not
21 sealing the courtroom. We may have to clear the
22 courtroom on occasion, but I -- if we're not sealing
23 the courtroom, I don't see why across the board the
24 transcripts need to be sealed.

25 MR. FINKELSON: And, honestly, we're of the

1 same mind. I mean, generally, the courtroom is going
2 to be open. We don't plan on asking to seal the
3 courtroom. Maybe there is a very limited
4 circumstance that --

5 MR. HANGLEY: No.

6 MR. FINKELSON: -- we don't anticipate.
7 But as a general practice, the view would be that the
8 transcripts would not be filed under seal. If a
9 particular issue comes up, we just ask Your Honor for
10 leave to raise it at that time.

11 THE COURT: Okay. Good. All right. Now,
12 is there anything else?

13 MR. FINKELSON: Nothing from us, Your
14 Honor. Thank you, Your Honor.

15 (Pause in proceedings.)

16 MR. FINKELSON: Experts, Your Honor, I take
17 it --

18 THE COURT: I'm not sequestering.

19 MR. FINKELSON: Experts are subject to the
20 same -- with respect -- if the expert are not
21 sequestered --

22 MR. HANGLEY: Agreed.

23 MR. FINKELSON: -- and with respect to
24 cross-examination, are subject to the same rules that
25 Your Honor described for non-party witnesses.

1 MR. HANGLEY: Oh, I would have thought that
2 they would be like a party witness.

3 MR. FINKELSON: We were this close, Your
4 Honor. You were doing a -- I saw you. You were even
5 about to stand. Experts are -- they're the
6 quintessential example of why --

7 MR. HANGLEY: (Indiscernible).

8 THE COURT: So I think for experts -- our
9 position would be that for experts, you shouldn't be
10 talking to your experts on cross-examination.

11 MR. HANGLEY: Let me huddle with my -- talk
12 to my people.

13 (Pause in proceedings.)

14 MR. HANGLEY: Okay. We're good on that,
15 Your Honor.

16 THE COURT: Okay.

17 MR. FINKELSON: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. FINKELSON: Nothing from us.

20 THE COURT: Well, then what we'll do, we're
21 going to get 50 jurors, five rows of ten each.
22 You're going to move your chairs. And I'll begin the
23 voir dire. I'm going to go through the entire set of
24 questions. I might change some of them. You should
25 have your copies in front of you. And then we'll go

1 to sidebar and we'll call them up probably starting
2 with juror number 1, and we'll keep calling them up
3 until we have ten --

4 MR. HANGLEY: 16 who have --

5 THE COURT: -- plus six.

6 MR. HANGLEY: -- not been excused for
7 cause.

8 THE COURT: And we'll rule afterwards. No
9 advocating at sidebar.

10 (Pause in proceedings.)

11 THE COURT: I'm going to change the
12 (indiscernible), so I don't think it's necessary.
13 The one question about cell phones and smart phones,
14 I might ask it the flip side. I think we're going to
15 get more people who say they have them than not.

16 MR. FINKELSON: I suspect so, Your Honor.

17 THE COURT: So to keep the people --

18 MR. HANGLEY: And I think I have
19 (indiscernible) cause.

20 THE COURT: We'll ask how many of you --
21 after introducing the question, how many of you do
22 not have either a cell phone or a smart phone? And
23 we'll mark those. And we might not call them up.
24 You can if you wish, but we'll certainly call up all
25 the people who have --

1 MR. FINKELSON: That's a --

2 THE COURT: -- cell phones and smart
3 phones.

4 MR. FINKELSON: That's a reasonable
5 approach.

6 THE COURT: With respect to the sidebar
7 questions, I think we'll cover who was your provider?
8 If Sprint or Comcast, is there anything about your
9 relationship with Sprint or Comcast that would --
10 that might make it impossible for you -- I'll pick up
11 the language of the -- that's not the precise
12 language -- might make it difficult for you to be
13 fair and impartial in deciding the case? Are there
14 any other questions you're going to propose that be
15 asked at sidebar of the witnesses -- of the
16 witnesses -- of the jurors, the proposed jurors, who
17 have cell phones or smart phones?

18 (Pause in proceedings.)

19 MR. FINKELSON: Not from our side, Your
20 Honor.

21 THE COURT: Well, we'll see what happens.

22 MR. FINKELSON: Obviously, we'll see what
23 they say, and other questions --

24 THE COURT: All right.

25 MR. FINKELSON: -- may arise.

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1 THE COURT: With that, I'm going to go off
2 the bench. Ms. Hull, are you sitting or --

3 MS. HULL: I'm (indiscernible).

4 THE COURT: I'm caught, but I'm okay now.
5 We'll get 50 jurors. And soon as we have them,
6 they'll be lined up in the hallway. You should be in
7 your seats. I guess we'll put many of you in the
8 jury box. And we'll move -- Michael, we'll move
9 those chairs to counsel table. And on that note, I
10 don't think there's anything else we have to do --

11 MR. HANGLEY: Thank you, Your Honor.

12 MR. FINKELSON: Thank you, Your Honor.

13 THE COURT: -- until we get the panel. You
14 may go about your business.

15 (Recess taken from 10:34 a.m. to 12:06
16 p.m.)

17 THE COURT: Good afternoon, everyone.
18 Please be seated.

19 (Pause in proceedings.)

20 VOIR DIRE

21 THE COURT: We are going to begin jury
22 selection in the case of Comcast Cable
23 Communications, LLC, against Sprint Spectrum L.P.
24 It's civil action 12-859. We'll start the jury
25 selection. I know it's been a long morning. We'll

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1 let you go for lunch at around 12:45 and we'll resume
2 after an hour. I expect to complete jury selection
3 today.

4 Let me explain a little bit about how we
5 will conduct the jury selection. I know you've seen
6 the video. This will amplify and explain some of the
7 things that were shown to you in the video. What
8 we're going to do is called a voir dire examination.
9 The term "voir dire," a french term, means "to speak
10 the truth."

11 In a civil case like this, it is a
12 preliminary examination of jurors to determine a
13 little bit more about them. The questions -- and I'm
14 going to ask the questions -- are not designed unduly
15 to inquire into your private affairs. Rather, the
16 questions are intended to supply information and
17 identity of experience so that the lawyers may
18 exercise more intelligently what we refer to as
19 peremptory challenges. They are challenges for
20 whatever reason. It's the right of a party to have a
21 certain number of peremptory challenges.

22 Some of you might be unduly concerned about
23 reference to these peremptory challenges. Let me
24 explain a peremptory challenge is no reflection
25 whatsoever on a juror who is excused. It simply

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1 means that an attorney in the case, based on his or
2 her trial experience, his or her knowledge of the
3 case, and the answers that you give in this voir dire
4 examination, has decided that someone else should sit
5 in that place. It is the goal of what we're going to
6 do this morning -- well, the morning is gone -- this
7 afternoon to obtain a fair and impartial jury, a jury
8 that will try the case based solely on the evidence
9 presented in the courtroom and the law, as I instruct
10 you on the law. The parties in the case are
11 certainly entitled to that.

12 Now, here's how we will conduct the
13 examination. As I said, I will ask the questions.
14 Ms. Hull, do the jurors have their placards?

15 MS. HULL: Yes.

16 THE COURT: If you have an answer to give,
17 we're not going to refer to you by name. That gets a
18 little confusing and there's no need to do that. You
19 all have a placard and the placard corresponds to
20 your juror seat numbers, and that's the way we will
21 refer to you during the voir dire. I'm going to ask
22 the questions, and if you have an answer to give,
23 hold the placard up.

24 In the old days, before we decided to use
25 these placards, jurors would be sitting there with

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1 their arms up and that got a little tiresome. Just
2 make certain that I see you, and if I miss you, then
3 by all means, wave the placard.

4 Some of the questions I will tell you will
5 be answered at sidebar. Sidebar is this area off to
6 my left, your right. We do that because we don't
7 want the answers to be shared with all of you. We're
8 not trying to keep secrets, but if we ask a question
9 about bias, if any of you had any good or bad
10 experiences with either of the parties, we don't want
11 that prospective juror to have to say in front of all
12 the other jurors anything about that very good
13 experience or that very bad experience. That
14 information will be provided to me and to counsel at
15 sidebar.

16 Everything we say in the courtroom is
17 recorded. There will be a record made of everything
18 said in open court and everything said at sidebar. I
19 want you to know that at the outset. Now, if I ask
20 any questions that you would prefer to answer at
21 sidebar, simply say so and we'll do that. There
22 might be some answers, for example, about disability,
23 that you prefer to give at sidebar, and that's fine.
24 We'll do it that way.

25 We're going to start, as I said, now. You

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1 don't have to raise your placard unless you have an
2 answer to give. And we'll go for about a half hour
3 and then we'll recess for lunch. We'll recess for
4 about an hour and reconvene in this courtroom, same
5 seats. All right.

6 (Pause in proceedings.)

7 THE COURT: First question. Tell you a
8 little bit about the case and then I'll ask you
9 whether you know anything about the case. This is a
10 civil lawsuit involving a dispute between two
11 corporations. The plaintiff is Comcast Cable
12 Communications, LLC, which I will refer to as
13 Comcast. Comcast has sued the defendant, Sprint
14 Spectrum L.P., which I will refer to as Sprint.
15 It's a patent infringement case.

16 Comcast owns a patent that it purchased
17 from Nokia Corporation. The patent has the number --
18 and it's a long number -- 6885870. I'm not going to
19 repeat that long number each time I refer to the
20 patent, and instead, we'll refer to it as "the 870
21 patent."

22 Comcast alleges that Sprint's messaging
23 services, which are referred to as SMS and MMS,
24 infringe the 870 patent. SMS, which is an acronym
25 for "short message service," allows mobile phone

1 subscribers to exchange short text messages. You may
2 simply know SMS as text messaging.

3 MMS, which is an acronym for "multi-media
4 messaging service," allows mobile phone subscribers
5 to exchange pictures, audio, or video. Sprint denies
6 infringement of the 870 patent and separately alleges
7 that the 870 patent is invalid. The jury in the case
8 will be asked to decide if any of the claims,
9 Comcast's claims of infringement and Sprint's claims
10 of invalidity, have merit. That's the role of the
11 jury.

12 First question, do any members of the jury
13 panel know anything about the case? Let the record
14 show no hands.

15 Now, the jurors who sit in the case will be
16 given a pamphlet, booklet. I'm holding it up. Among
17 other things -- and what is in it will be explained
18 to you, but among other things, there is a glossary
19 of these abbreviations, and I've referred to two of
20 them, SMS and MMS. I don't want you to think you
21 have to memorize these things. That would be a very
22 well, I think difficult chore, but you'll be given
23 the tools to enable you to better understand the
24 evidence as it's received, including what each
25 acronym means.

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1 All right. Second question, I'm going to
2 ask counsel for plaintiff, and there's a big group of
3 them, to introduce themselves, their law firm, and
4 their representatives, and all witnesses who will
5 testify on behalf of the plaintiff, Comcast. Before
6 they do though, we're doing this so that you can know
7 the witnesses who will be called and tell us -- the
8 question at the end of this introduction will be do
9 any of you know any of these people? We want to know
10 whether you know any of the people who are involved
11 in representation of the plaintiff, Comcast, and
12 whether you know any of the witnesses who will
13 testify. Mr. Hangley?

14 MR. HANGLEY: Good afternoon. I am Bill
15 Hangley from the Philadelphia Law Firm of Hangley,
16 Aronchick, Segal, Pudlin & Schiller. Sitting next to
17 me is Dan Goettle from the Philadelphia law firm of
18 Baker Hostetler. Sitting next to him is George
19 Medlock, who -- I hope I have your title right,
20 George -- is the general counsel responsible for
21 patent and other intellectual property technology at
22 Comcast. I know that's not the right title, but it's
23 the one I'm using right now.

24 Now, the various people behind me are
25 Andrew Erdlen, Larry LaBella, Kim Ferrari, and Ann

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1 Greeley. They will be -- they will be coming and
2 going from time to time, and you will see other
3 people from one of our two law firms who will be here
4 with the -- the witnesses --

5 THE COURT: I think, Mr. Hangle, in view
6 of the numbers, I'm going to first ask whether any of
7 the members of the jury panel know any of the
8 attorneys who were just introduced by Mr. Hangle.

9 MR. HANGLEY: That's always disappointing.

10 THE COURT: Do any of you know anything
11 about any of the law firms to which Mr. Hangle just
12 referred? Let the record show no hands in response
13 to either question. Mr. Hangle, now you may
14 introduce your witnesses. And what I want you to do
15 is tell me at the end of this introduction whether
16 you, members of the jury panel, know any of these
17 witnesses. And I should say the list will probably
18 be long and I should quickly add it will be longer
19 than the number of witnesses who are actually called.
20 Mr. Hangle?

21 (Pause in proceedings.)

22 MR. HANGLEY: It is going to be a long
23 list. I apologize. Dr. Robert Akl, a professor from
24 Dallas, Texas; Satisha Bassama; Christy Buckendahl;
25 Byron Cahoun; Michael Carrie; Mark Dellinger; Jeffrey

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1 Dwoskin, that's D-W-O-S-K-I-N; Ramesh Golla; Sean
2 Hotzel; Christopher Holmes; Scott Kalinoski; Mark
3 Lipford; David Marcus; Stephanie Miller; Mike Moss;
4 Charles Carson Peters; Dan Pope; Michelle Reilly;
5 John Rousnick; Will Souder, that's S-O-U-D-E-R; Bruce
6 Stoner; Plarent Tirana; James Weber; Patrick Wilson;
7 Sean Wilson; Mark Yarkovsky; and James Finnegan.

8 THE COURT: Thank you, Mr. Hangle. Do any
9 members of the jury panel know any of the people just
10 mentioned by Mr. Hangle? Let the record show no
11 hands. Mr. Riopelle or Mr. Finkelson, who will speak
12 for Sprint?

13 MR. FINKELSON: I will, Your Honor.

14 THE COURT: Mr. Finkelson, will you
15 introduce yourself, your legal team, your client
16 representative, and then give me a chance to inquire
17 of the panel, followed by the introduction of your
18 witnesses. You may proceed.

19 MR. FINKELSON: Thank you, Your Honor. It
20 would be my pleasure. Good afternoon, everyone. My
21 name is Dave Finkelson of the law firm of McGuire
22 Woods. With me is my partner, Brian Riopelle, also
23 of the law firm of McGuire Woods, and Colleen Simpson
24 from the Philadelphia law firm, Harkins Cunningham.

25 Here for Sprint is the Vice President of

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1 Wholesale at Sprint. He'll be our corporate
2 representative throughout this trial, Mr. Scott
3 Kalinoski, and also Lee Lauridsen, who is in the
4 legal department at Sprint. And as was the case with
5 Comcast, a number of other individuals who you will
6 see coming and going throughout the case, Christina
7 Marinakis, Meghan Rachford, and Chad DeBeau.

8 THE COURT: Thank you, Mr. Finkelson. Do
9 any members of the jury panel know any of the
10 attorneys -- well, Mr. Finkelson or any of the
11 attorneys he just introduced? Let the record show
12 now hands.

13 MR. FINKELSON: May I?

14 THE COURT: Yes.

15 MR. HANGLEY: I should mention one other
16 attorney who will be here and I know will be
17 examining a witness, so you will see her in fairly
18 short order. That is my partner, Rebecca Melley,
19 formerly known as Rebecca Santoro. And it should
20 have occurred to me to mention that.

21 THE COURT: Do any of you know Rebecca --

22 MR. HANGLEY: Oh, and another named Dale
23 Heist, that's H-E-I-S-T, will also be examining a
24 witness or two.

25 THE COURT: Do any of you --

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1 MR. FINKELSON: I thought he was going to
2 say somebody on the panel knows me. That's what I
3 thought he was going to --

4 THE COURT: Well, that would be a good way
5 to get you disqualified.

6 MR. FINKELSON: It sure would, Your Honor.

7 THE COURT: Do any of you know the two
8 witnesses -- two attorneys rather, just identified by
9 Mr. Hangley? Let the record show no hands. Mr.
10 Finkelson, you may now proceed to introduce your --
11 I'm going to call them prospective witnesses. Not
12 all of these people will be called.

13 MR. FINKELSON: I think that's the good
14 news on both sides, Your Honor, that not all of these
15 people will be called and some of these will overlap
16 with names you've just heard, but I'll take you
17 through the list: Robert Ozzie, Harley Ball, Satisha
18 Bassama, Christy Buckendahl, Dr. Allen Cox, Mark
19 Bellinger, Dr. Christian Depain, Nicholas Gurdicci,
20 Ramesh Golla, Andrew Heartvelt, Sean Hotzel, Scott
21 Kalinoski, Even Koch, Mark Lanning, Mark Lipford,
22 David Marcus, Stephanie Miller, Mick Moss, Rosemary
23 Pierce -- we're at the Ps -- Nathaniel Polish, Dan
24 Pope, Brian Synogels, Plarent Tirana, Patrick Wilson,
25 Sean Wilson, Mark Yarkovsky, Jing Yu Jo, and Greg

1 O'Conner.

2 THE COURT: Do any members of the jury
3 panel know any of the prospective witnesses just
4 identified by Mr. Finkelson? Let the record show no
5 hands.

6 I told you there are two parties in the
7 case. Comcast is the plaintiff; Sprint is the
8 defendant. And the patent in question was purchased
9 by Comcast from Nokia Corporation. So I'm going to
10 ask you whether you, members of the panel, your
11 immediate family, or any close friends ever worked
12 for, been a customer of, owned stock in, or done
13 business with Comcast, Sprint, or Nokia. I debated
14 about whether I should ask that question. In the
15 flip side, any of you haven't, what I think we'll do
16 is get your numbers -- and I can tell you from up
17 here, all of a sudden, a sea of white, these cards --
18 and I think what we'll do is just get your numbers,
19 and we'll start with the juror in the number 1 seat
20 and go row by row. But I can tell you I -- it's the
21 first time I've seen that kind of a response, and I
22 saw a sea of white.

23 So, again, let me repeat the question. I
24 think you know it, but I'll repeat it. Have you or
25 any members of your immediate family or any close

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1 friends ever worked for, been a customer of, owned
2 stock in, or done business with Comcast, Sprint, or
3 Nokia? And we'll just get your numbers. Start in
4 the first row.

5 (Pause in proceedings.)

6 THE COURT: Looks like almost all of you.
7 All right, then we'll take the second row.

8 (Pause in proceedings.)

9 THE COURT: Third row?

10 (Pause in proceedings.)

11 THE COURT: Fourth row?

12 (Pause in proceedings.)

13 THE COURT: We're up to 31. You can put
14 yours down. I was told that it's much better that I
15 tell you that I've recognized your number so that you
16 don't have to sit there like the student in the back
17 row of a local schoolhouse with his arm propped up or
18 her are propped up. 33, 34, 35, 36, 37, 38, 39, 40.
19 And the final row, fifth row?

20 (Pause in proceedings.)

21 THE COURT: Well, someone in the fifth row
22 hasn't held their hand up. Who -- why don't you
23 guys -- yes, why don't you guys put your hands down?
24 Who hasn't? Thank you.

25 (Pause in proceedings.)

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1 THE COURT: All right, we'll get the answer
2 at sidebar. Thank you. Next question, have you or
3 any members of your immediate family or any close
4 friends ever worked for -- and these are a number of
5 other companies in the same general business which
6 will be identified in the testimony. And these
7 companies are Acision, Comverse, Syniverse, Openware,
8 Nokia Siemens, Ericsson, Nortel, or Alcatel-Lucent.
9 It's a company that merged with Lucent. And I'll
10 repeat those -- I'll repeat the question. Have you
11 or any members of your immediate family --

12 (Pause in proceedings.)

13 THE COURT: Okay. Have you, any members of
14 your immediate family, or any close friends ever
15 worked for these companies: Acision, Comverse,
16 Syniverse, Openwave -- I'm told I pronounced it
17 Openware the first time -- Nokia Siemens, Ericsson,
18 Nortel, or Alcatel-Lucent? Number 6, 7 --

19 (Pause in proceedings.)

20 THE COURT: -- 10. Next row, 19, 32, 34,
21 and 40. 49.

22 (Pause in proceedings.)

23 THE COURT: All right, we'll get the
24 answers at sidebar. Next question, have you, any
25 members of your immediate family, or any close

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1 friends ever had any experience, either good or bad,
2 with Comcast or Sprint that might prevent you from
3 being a fair and impartial juror in this case? Have
4 you, any members of your immediate family, or any
5 close friends, ever had any experience, either good
6 or bad, with Comcast or Sprint that might prevent you
7 from being fair and impartial as a juror in this
8 case? Okay, we'll get the answers. 5. Next is --
9 you have a glare on -- is it 31? Yes. No, 12.

10 MR. FINKELSON: 13.

11 THE COURT: 30.

12 MR. FINKELSON: 13.

13 THE COURT: But I'm seeing -- all right.
14 Thank you. 13. Next row? And that number is 34?
15 24. 24. 32. This isn't working so well. I need
16 binoculars up here. 33. 35. Not 35?

17 MR. FINKELSON: No.

18 THE COURT: Oh.

19 (Pause in proceedings.)

20 THE COURT: 46, 47, 49. Anyone I missed?
21 What? Okay.

22 (Pause in proceedings.)

23 THE COURT: Anyone else? As I said a few
24 moments ago, the case involves a dispute over alleged
25 patent infringement. Have any of you served as a

1 juror in a civil case that involved a claim of patent
2 infringement? Let the record show no hands.

3 Have you ever served as a juror in any
4 other type of civil case or a criminal case or as a
5 member of a grand jury? And I'm sure many of you
6 will raise your hands. I'm getting a lot of hands.
7 What I want to know from all of you folks who have
8 served on other types of juries, whether there was
9 anything about that prior jury service that might
10 prevent you from being fair and impartial as a juror
11 in this case. So the question is for those of you
12 who have served as jurors in cases other than patent
13 infringement cases, was there anything about your
14 jury service that might prevent you from being fair
15 and impartial in deciding this case? Let the record
16 show no hands.

17 Next, have you, any members of your
18 immediate family, or any close friends had any
19 training in the law or any work experience in a law-
20 related field? And I'm sure I'm going to get a lot
21 of hands. I think what we'll do, I'll -- I'm going
22 to get some answers in open court. And I want you
23 to -- you can keep your cards down until I'm finished
24 with the person I'm speaking -- the prospective juror
25 I'm speaking with. And we'll start with juror number

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1 1. Will you stand, please? Tell me about your
2 answer to that question, and I'll repeat it. Have
3 you, any members of your immediate family, or any
4 close friends had any training in the law or any work
5 experience in a law-related field?

6 JUROR NUMBER 1: Yes, I have a brother-in-
7 law that's a police officer.

8 THE COURT: And he has nothing to do with
9 patents. Would that be --

10 JUROR NUMBER 1: No.

11 THE COURT: -- a fair statement?

12 JUROR NUMBER 1: No.

13 THE COURT: Anything about your
14 relationship with your brother that would prevent you
15 from being -- brother-in-law, you said?

16 JUROR NUMBER 1: Uh-huh.

17 THE COURT: -- that would prevent you from
18 being fair and impartial in deciding this case?

19 JUROR NUMBER 1: No.

20 THE COURT: Thank you. Next juror? Yes?
21 Juror number 2.

22 JUROR NUMBER 2: Yes, I have a close friend
23 that's a lawyer.

24 THE COURT: Does he practice or she
25 practice patent law?

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1 JUROR NUMBER 2: I honestly don't know. I
2 don't think so.

3 THE COURT: If you're selected to sit on
4 this jury, do not find out whether that lawyer
5 practices patent law and do not talk to that lawyer
6 about patent law.

7 JUROR NUMBER 2: Okay.

8 THE COURT: Would the fact that you have a
9 friend who is an attorney prevent you from being fair
10 and impartial in deciding this case?

11 JUROR NUMBER 2: No.

12 THE COURT: Thank you. Next?

13 JUROR NUMBER 3: I serve on a board with a
14 patent attorney.

15 THE COURT: Well, you're -- I ought to
16 identify. You're juror in seat 3. Do you talk to
17 that person about patent-related matters?

18 JUROR NUMBER 3: No.

19 THE COURT: If you're selected to sit on
20 this jury, I instruct you not to have any discussions
21 with this lawyer about patent-related matters. Would
22 the fact that you know this lawyer prevent you from
23 being fair and impartial in deciding this case?

24 JUROR NUMBER 3: No.

25 THE COURT: Thank you. Next juror with an

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1 answer to that question?

2 JUROR NUMBER 4: My wife worked for
3 numerous law firms most of --

4 THE COURT: And you're --

5 JUROR NUMBER 4: -- throughout her career.

6 THE COURT: I have to be a little more
7 careful. You're in seat number 4.

8 JUROR NUMBER 4: Oh, 4.

9 THE COURT: No, that's me. I should have
10 identified you. Don't lose your card.

11 JUROR NUMBER 4: My wife is a paralegal and
12 she's worked for numerous attorneys over a good part
13 of her career. And then also, our associate's
14 company I work for, the company attorney, I know him
15 as a professional acquaintance, and one of my
16 responsibilities was to, you know, fly him out to
17 Pittsburgh and places that do cases in federal court.

18 THE COURT: What about patent law? Have
19 you ever been involved in discussions with any of
20 these people --

21 JUROR NUMBER 4: No.

22 THE COURT: -- with --

23 JUROR NUMBER 4: Not --

24 THE COURT: -- involving patents?

25 JUROR NUMBER 4: No, just normal

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1 conversation, but not with respect to the details of
2 patent law.

3 THE COURT: Would your relationship with
4 these attorneys prevent you from being fair and
5 impartial in deciding this case?

6 JUROR NUMBER 4: No.

7 THE COURT: Thank you. Next juror? Anyone
8 else in the first row? Yes? Juror seat 5.

9 JUROR NUMBER 5: I hold a patent for my
10 business and I've worked with a patent attorney on
11 the patent that I currently own.

12 THE COURT: I think we'll call you up to
13 sidebar. We'll get your answers at sidebar at the
14 end of the questioning of the entire panel.

15 (Pause in proceedings.)

16 THE COURT: Anyone else in the first row?
17 Second row? Juror -- I'm sorry. Yes?

18 JUROR NUMBER 10: Yes. Well, I worked for
19 attorneys for ten years. I was a paralegal. Now my
20 husband and I own a company now and, of course, we
21 have an attorney with our -- that works with our
22 firm, so --

23 THE COURT: Have you been involved in
24 patent law at all? Would the relationships you have
25 with -- have had with attorneys prevent you from

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1 being fair and impartial in deciding this case? You
2 have to answer yes or no.

3 JUROR NUMBER 10: I said no.

4 THE COURT: Thank you very much.

5 JUROR NUMBER 10: You're welcome. Thank
6 you.

7 THE COURT: Second row? Yes? Seat number
8 15.

9 JUROR NUMBER 15: My wife was a -- is an
10 attorney, nothing with patent law at all.

11 THE COURT: Would the fact that your wife
12 is an attorney prevent you from being fair and
13 impartial in this case?

14 JUROR NUMBER 15: No, sir.

15 THE COURT: I would instruct you that
16 because you live with an attorney and can get a lot
17 of free legal advice, if you're selected to sit on
18 this jury, you are not permitted to talk to your wife
19 or, indeed, anyone else regarding the case. Do you
20 understand that?

21 JUROR NUMBER 15: Understood, Your Honor.

22 THE COURT: Thank you. Next second row?
23 18.

24 JUROR NUMBER 18: I have two friends that
25 are attorneys. One is basically for real estate and

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1 the other one is an estate attorney.

2 THE COURT: Would those relationships
3 prevent you from being fair and impartial in deciding
4 this case?

5 JUROR NUMBER 18: No, Your Honor.

6 THE COURT: Thank you. Anyone else? Yes?
7 19.

8 JUROR NUMBER 19: 19. I have a former,
9 long-term girlfriend who was -- is a patent attorney.
10 I have several friends who are paralegals, close
11 friends.

12 THE COURT: The operative word in your
13 answer was "former." Do you talk to this former
14 girlfriend who is the patent attorney from time to
15 time?

16 JUROR NUMBER 19: About patent law.

17 THE COURT: About patent law? We'll see
18 you at sidebar.

19 (Pause in proceedings.)

20 THE COURT: Anyone else in the second row?
21 Seeing no hands. Third row? Seat 21, yes?

22 JUROR NUMBER 21: My daughter just got --

23 THE COURT: Keep your voice up, please.

24 JUROR NUMBER 21: Okay.

25 THE COURT: No, I got that. I need your

1 voice.

2 JUROR NUMBER 21: Oh, okay. My daughter
3 just passed the Delaware Bar and is working at the
4 Delaware Supreme Court.

5 THE COURT: Well, congratulations. Does
6 she handle patents at all or don't you know?

7 JUROR NUMBER 21: No.

8 THE COURT: Would the fact that your
9 daughter just passed the Delaware Bar prevent you
10 from being fair and impartial in deciding this case?

11 JUROR NUMBER 21: No.

12 THE COURT: And if you're selected to sit
13 on the jury, you promise you won't go back to your
14 daughter and ask her questions?

15 JUROR NUMBER 21: I do.

16 THE COURT: Thank you. We'll continue in
17 the second row. Yes? Juror in seat number 30.

18 MS. HULL: 24.

19 THE COURT: I'm sorry, I missed you. Yes?

20 JUROR NUMBER 24: My son is currently
21 serving in the U.S. Army.

22 THE COURT: I'm sorry, I didn't hear you.

23 JUROR NUMBER 24: My son is currently
24 serving in the U.S. Army.

25 THE COURT: Oh. I don't think that would

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1 prevent you from being fair and impartial, is that
2 correct?

3 JUROR NUMBER 24: Yes.

4 THE COURT: Okay, thank you. 27.

5 JUROR NUMBER 27: 27.

6 THE COURT: Yes?

7 JUROR NUMBER 27: In a former career I used
8 to serve as an expert witness in circuit courts.

9 THE COURT: Expert witness in?

10 JUROR NUMBER 27: Forensic sciences.

11 THE COURT: And did you get involved in
12 patent cases?

13 JUROR NUMBER 27: No.

14 THE COURT: Would your experience as an
15 expert witness in forensic science prevent you from
16 being fair and impartial in deciding this case?

17 JUROR NUMBER 27: No.

18 THE COURT: Thank you. Anyone else in that
19 row? Yes? I need your number. I can't --

20 JUROR NUMBER 30: My son's friend is a
21 patent attorney.

22 THE COURT: Do you talk to him about patent
23 law?

24 JUROR NUMBER 30: No.

25 THE COURT: If you're selected to sit on

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1 this jury, you will be instructed that you cannot
2 talk to this friend of your son's who's a patent
3 lawyer. Could you follow that instruction?

4 JUROR NUMBER 30: Yes.

5 THE COURT: Thank you. Third -- fourth
6 row?

7 JUROR NUMBER 32: 32.

8 THE COURT: Yes?

9 JUROR NUMBER 32: I work in T-mobile's
10 legal department as a compliance officer, which is
11 wire taps. And I also work with, like you mentioned
12 before, Ericsson, Alcatel, Nortel, and Nokia.

13 THE COURT: I think we might want to talk
14 to you at sidebar.

15 JUROR NUMBER 32: Okay.

16 THE COURT: But thank you very much.

17 JUROR NUMBER 32: You're welcome.

18 THE COURT: Anyone else in the third --
19 fourth? Yes? Juror number 40.

20 JUROR NUMBER 40: My current employer was a
21 general counsel for Kimber America.

22 THE COURT: Did you get involved in patent
23 discussions with this gentleman?

24 JUROR NUMBER 40: We've never discussed
25 patent law, but I'm sure that he -- part of his job

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1 was patent law.

2 THE COURT: And that was a former employer?

3 JUROR NUMBER 40: Yes. No, no, he's my
4 current employer, but --

5 THE COURT: Oh.

6 JUROR NUMBER 40: -- his former job was a
7 patent -- was general counsel.

8 THE COURT: If you're selected to sit on
9 this jury, you'll be instructed that you cannot
10 discuss the case with anyone until after you reach a
11 verdict. Could you follow that instruction?

12 JUROR NUMBER 40: Yes.

13 THE COURT: Thank you. Finally, last row?

14 Yes? JUROR NUMBER 44: I worked in the corporate
15 legal --

16 THE COURT: I need -- I --

17 JUROR NUMBER 44: I'm sorry, 44.

18 THE COURT: Yes.

19 JUROR NUMBER 44: I worked in the corporate
20 legal department advising our internal business on
21 tax-related matters.

22 THE COURT: Did you get involved in patent
23 matters at all?

24 JUROR NUMBER 44: Not at all.

25 THE COURT: If you're selected to sit on

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1 this jury, could you be fair and impartial in
2 deciding this case?

3 JUROR NUMBER 44: Yes.

4 THE COURT: Thank you. And finally, 48.

5 JUROR NUMBER 48: 48.

6 THE COURT: Yes?

7 JUROR NUMBER 48: Our family business was
8 involved in a legal dispute over a copyright.

9 THE COURT: Over a copyright?

10 JUROR NUMBER 48: Right.

11 THE COURT: Did you get into any discussion
12 about patents? I don't think it --

13 JUROR NUMBER 48: No, sir.

14 THE COURT: -- would happen normally.

15 JUROR NUMBER 48: No.

16 THE COURT: Would the fact that you had a
17 dispute over a copyright prevent you from being fair
18 and impartial in deciding the case?

19 JUROR NUMBER 48: No.

20 THE COURT: Thank you. All right, we're at
21 the time I said we would break for lunch. We have
22 some more questions, and what I'm going to do is
23 recess for now for an hour until about 1:50. I want
24 you to leave these white placards on your seats. Try
25 to remember your seat number because that's the only

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1 way we're identifying you right now. And if you have
2 any questions, Ms. Hull, who is seated in the middle,
3 or any of my court officers will be able to help you.
4 Mr. Cosgrove, on my right, you're left, is going
5 to -- his job is to record everything that we say.
6 He's called an Electronic Sound Recording Operator.
7 You can talk to him. The gentleman on my left, your
8 right, is Ian Peterson, my law clerk who is working
9 with me on this case. And you can talk to any of
10 them if you have any issues. But we're going to be
11 in recess now.

12 You know very little about the case. I
13 don't want you to discuss it with anyone, even among
14 yourselves, and I'll explain that in a bit. Take
15 your belongings with you, leave your placards on your
16 seats, and we'll see you -- do you want them lined up
17 outside or -- they can come in. Come in the
18 courtroom. When you come back you can come in the
19 courtroom and return to your seats. We'll pick up
20 the jury selection at about 1:50.

21 (Jury out, 12:52 p.m.)

22 THE COURT: Be seated, everyone, as soon as
23 the jurors leave. And we'll be very brief. I've got
24 three orders that I will give you, one covering the
25 dropping of the claims against the unnecessary Sprint

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1 companies, the other addressing the joint
2 infringement claim, and the third granting in part
3 and denying in part the motion we -- that I ruled on
4 this morning. Everything is in accordance with my
5 rulings with one exception. I'm told that if we drop
6 the counterclaim in the caption, the court clerk will
7 drop Sprint as a party plaintiff. You'll remain as a
8 defendant. And I suspect that's not a goal to be
9 desired.

10 So what we're going to do is this. On
11 every order we'll put both captions. On everything
12 going to the jury, so as not to confuse them, we'll
13 only use the Comcast versus Sprint caption. And with
14 that, let me distribute these three orders.

15 (Pause in proceedings.)

16 THE COURT: All right. With that, we're in
17 recess until about 1:50. You may go about your
18 business.

19 (Luncheon recess taken, 12:55 p.m.)

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I N D E X

VOIR DIRE

PAGE NUMBER

By Judge Dubois

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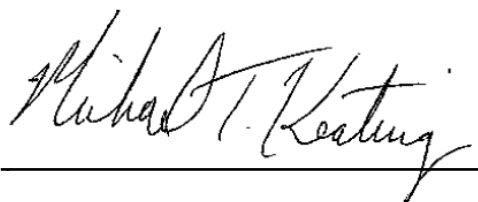
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CERTIFICATION

I, Michael Keating, do hereby certify that
the foregoing is a true and correct transcript from the
electronic sound recordings of the proceedings in the
above-captioned matter.

1/31/17

Date

A handwritten signature in cursive script, reading "Michael T. Keating", written over a horizontal line.

Michael Keating